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### Introduction - Takeovers with or without worker voice: workers' rights under the EU Takeover Bids Directive

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*Published in:*

Takeovers with or without worker voice: workers' rights under the EU Takeover Bids Directive

*Publication date:*

2016

*Document Version*

Publisher's PDF, also known as Version of record

[Link to publication in Tilburg University Research Portal](#)

*Citation for published version (APA):*

Cremers, J., & Vitols, S. (2016). Introduction - Takeovers with or without worker voice: workers' rights under the EU Takeover Bids Directive. In J. Cremers, & S. Vitols (Eds.), *Takeovers with or without worker voice: workers' rights under the EU Takeover Bids Directive* (pp. 11-29). (Workers' rights in company law). ETUI.

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# Introduction

Jan Cremers and Sigurt Vitols

This book presents the results of a study of workers' rights in company takeover situations in Europe. Technically speaking, takeovers represent an attempt by an external party to acquire or extend a controlling interest in a company whose voting shares are listed on a public exchange.<sup>1</sup> This external party can be a company, a financial investor, an individual or other type of entity. Since 2000, more than 11,000 company takeovers have taken place in the countries currently in the EU/EEA.<sup>2</sup>

Takeovers are extremely important for workers because a change in ownership typically leads to restructuring in the firm, which involves measures such as replacement of leadership, changed working conditions, increased work intensity and/or mass redundancies. Even when the workers' objective working situation does not change, takeovers can cause considerable stress and loss of motivation and trust in management due to lack of information and uncertainty about the outcome. When the acquiring party is another company, such measures frequently affect the workforce of the acquiring company as well as that of the target. From a stakeholder point of view, it is therefore crucial that workers have strong rights to receive timely and full information about the planned takeover and to intervene at an early stage of the takeover process to protect their interests.

In recognition of the impact of takeovers on workers, legislators at both the national and European levels have defined rights for workers and their representatives to information, consultation and participation in decision-making in takeover situations. At the national level, these rights are typically embedded in a catalogue of rights for worker representation

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1. Note that the word 'takeover' is often used in a broader sense to refer also to the acquisition of a controlling interest in a private company, not just in publicly-traded companies. In this book we are specifically interested in situations covered by the EU Takeover Bids Directive.
  2. This figure is based on our own analysis of Thompson One data.

bodies. At the European level, the main instrument for defining rights for workers specifically in takeover situations is the EU Takeover Bids Directive (2004/25/EC), which was passed over a decade ago. The European Works Councils Directive (94/45/EC, recast 2009/38/EC) and the Information and Consultation Directive (2002/14/EC) also define general rights for workers in restructuring situations, including takeovers.

This introduction explains the background to and summarises the results of the study presented in this book. A primary focus of the study is the EU Takeover Bids Directive (hereafter referred to as the ‘Takeover Bids Directive’, the ‘Takeover Directive’ or simply ‘the Directive’), which was the first piece of legislation regulating takeovers at the European level. A key theme of this study is that the basic rights defined for workers in takeover situations by this Directive do not allow workers to defend their interests adequately in such situations. In many European countries, national legislation and industrial relations institutions provide more effective protection by involving workers at an early stage and defining stronger rights for consultation and participation in takeover situations. The importance of national legislation and practice results in wide variation across countries in the actual rights that workers have. The review of the implementation of this Directive in 2012 provided an opportunity for strengthening worker rights through revision, but the European Commission and European Parliament declined to take this opportunity.

The next section of the introduction summarises the economic and political context for firm restructuring, of which takeovers are an important type. The third section discusses two different conceptual approaches to regulating takeovers, namely the ‘shareholder’ as opposed to the ‘stakeholder’ approach, and shows that the EU Takeover Bids Directive clearly falls in the ‘shareholder’ camp. The fourth section of the introduction discusses the intent of the study and the final section summarises the chapters in the book.

## **Why are takeovers important? The economic and political context**

Although most takeovers go unnoticed by the public at large, some takeovers have received intensive press coverage. This is particularly the case where the takeovers are contested (for example, ‘hostile’ takeover

attempts that are resisted by the management and workforce of the target company), where prominent firms are involved and where the potential consequences for workers are large. In the United Kingdom, for instance, an extended takeover battle for Cadbury in 2009–2010 and the subsequent closure of a major plant in breach of promises made by the bidder company caught the public's eye, ultimately leading to a revision of UK takeover rules (for an analysis see the chapter by Georgina Tsagas in this volume). The prolonged takeover fight for the German telecommunications and engineering firm Mannesmann by the UK firm Vodafone in 2000 also was headline news for months in Germany, a country in which hostile takeovers were practically unknown (Höpner and Jackson 2006). In the United States, waves of hostile takeovers – most prominently in the 1980s – have led to the portrayal of 'corporate raiders' in Hollywood movies such as *Wall Street*.

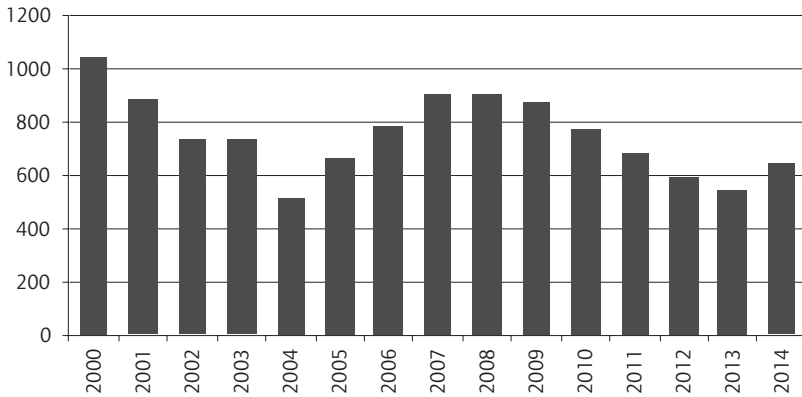
Apart from some of the spectacular takeovers that were first and foremost the work of so-called 'activist' speculator groups (and which provoked sharp reactions: for instance, the leader of the German Social Democratic Party sparked a debate on financial capitalism in 2005 by referring to private equity firms as 'locusts'<sup>3</sup>) the drivers for takeovers can be manifold (see the chapter by Andrew Pendleton in this volume). Mergers and takeovers can be motivated by resource seeking, whether in the form of natural resources, cheap labour, know-how or capital. The driving force behind expansion can be a search for new markets; later the strategy may shift to restructuring and/or closure. Most of the related restructuring and relocation is cost driven, whether it takes the form of an efficiency operation, a synergy effort or a rationalisation of the production process. The example of several large conglomerates shows the strategy of asset seeking via economies of scale in a broad range of economic sectors (energy, water, BTP, waste management and so on) and with a range of activities (production, concessions, operational and facility management, maintenance and so on), including internal competition. At the same time, there is a clear divergence on the operational side, with a concentration at the top of the production chain on the core business, while operations are outsourced and externalised to dependent services, supply industries and subcontractors. This process of outsourcing and

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3. The German Social Democratic Party in its programmatic debate in 2005 referred to 'irresponsible swarms of locusts that measure success in quarterly intervals, suck out the substance and let companies go bankrupt when they have finished eating' (SPD 2005: 18).

dependent subcontracting sometimes becomes an aim in itself (leading to ‘cost reduction’ by minimising labour costs), even if there are no objective economic reasons and the restructuring as such does not necessarily imply layoffs. However, in many sectors of the economy across the EU large enterprises dominate the scene, on which many SMEs are dependent. This means that the restructuring of the larger companies potentially has a much greater effect on employment than is indicated by direct job losses.

Figure 1 EU/EEA member countries, number of takeovers 2000-2014



Source: own calculations based on SDC Platinum data

Takeovers have become common events in Europe, with more than 11,000 since 2000. The number of takeovers varies from year to year, with takeover activity being particularly high during ‘speculative’ phases of the financial cycle, such as the high-tech bubble in 1998–2000 and the run-up to the financial crisis in 2005–2007 (see Figure 1). The number of takeovers also varies widely across countries and is not entirely explained by country size. Factors such as the number of companies listed on the stock market and how ‘shareholder-friendly’ the regulatory environment is also play a role (see Table 1). The United Kingdom, for example, has more than three times as many takeovers as Italy, which is roughly the same size in terms of population.

Table 1 Number of takeovers between 2000-2014, by EU/EEA country

Country	Number of takeovers	Country	Number of takeovers
Austria	208	Latvia	36
Belgium	207	Liechtenstein	1
Bulgaria	121	Lithuania	76
Croatia	57	Luxembourg	47
Cyprus	81	Malta	8
Czech Republic	83	Netherlands	376
Denmark	309	Norway	655
Estonia	41	Poland	650
Finland	192	Portugal	219
France	1,472	Romania	117
Germany	1,380	Slovakia	18
Greece	298	Slovenia	60
Hungary	126	Spain	584
Iceland	64	Sweden	846
Ireland	112	United Kingdom	2,238
Italy	620	<b>TOTAL</b>	<b>11,302</b>

Source: own calculations based on SDC Platinum data

## Shareholders vs stakeholders and the EU Takeover Bids Directive

The engagement and involvement of the different stakeholders within the company has completely shifted in the past three decades. The introduction of free movement principles in the European Union created an attractive open market for businesses. Along with the removal of the internal borders in Europe, the Member States and the European Commission started to work out an unrivalled deregulation agenda. At the start there was at least lip service to a corporate governance model with a well-balanced division of power between the different stakeholders. Capital owners, management and labour cooperated in a productive environment and kept the real economy going. But this engagement and involvement of the different stakeholders within the company has been eroded in the past three decades.

The globalisation of an important part of the business environment has brought spectacular takeovers, mergers and demergers, and financial market liberalisation has created a global field for gain. A key question in

this development is nowadays where and in whose hands the power centre lies in a company, as the connection between ownership relations and the management structure has been loosened. Activities of financial investors and groups of so-called 'activist' shareholders have further separated ownership from the risks taken. Modern managers who job-hop to the places with the best bonuses have replaced the classical entrepreneur at the top of the firm. The board of directors, the supervisory board or council of commissioners, site and country management, works councils, trade unions and shareholders are part of a power struggle for corporate control that can even lead them into the courtroom. The interaction inside companies between capital owners, management, corporate owners, employees and their representatives and other stakeholders will probably diverge within the different market strategies developed. The results can be changing coalitions and a great variety of opportunities and limits for real worker involvement in decision-making processes.

In terms of company law and financial regulation, the distribution of rights between the different parties involved in takeovers is a highly controversial matter in both academic and public policy debates. At one extreme, the 'shareholder' (or alternatively 'shareholder value') approach, which typifies mainstream economic thinking, views takeovers in a favourable light, seeing them as a major driver of economic 'efficiency' (Jensen and Meckling 1976; Jensen 1988). According to this view, which gives primacy to financial ownership, a so-called 'open market for corporate control' is desirable because it allows a company to be acquired by a new owner who can do a better job of running the firm and creating more value. Furthermore, the threat of a hostile takeover is held to be the ultimate mechanism for disciplining underperforming management, as a new owner could replace the managers of the acquired company. This theoretical perspective generally sees the impact of takeovers on workers as positive, because the new entity is supposed to be a more efficient and competitive employer.

The stakeholder approach, however, takes a fairly critical view of takeovers. It emphasises the short-term orientation of many shareholders, who typically have the sole right to decide on whether or not to accept a takeover bid, and the disruption of implicit contracts with stakeholders such as workers that takeovers often involve (Horn 2012; Johnston 2009; Sjøfjell 2009). For the stakeholder view, the hostile takeover is a symbol of unbridled financial capitalism, particularly in the case of highly

leveraged takeovers when target companies are loaded with so much debt that regular investments become compromised, ultimately leading to ‘restructuring’ and employment losses. This perspective also sees many ‘friendly’ takeovers as being driven by a financial logic of ‘cashing out’ over the short to medium term rather than a concern for the long-term survival of the firm through investment in skills and innovative products and services. In those terms – as illustrated by many of the case studies in this book – stakeholders (employees, the region, even local management) may come into conflict with speculators.

The question of how takeovers should be regulated is thus a very controversial and politically divisive issue, because the question is which party ultimately has the right to decide who the owner of a firm is. Although proposals for a European takeover directive date back to the 1970s, this issue has been regulated only recently at the European level, through Directive 2004/25/EC on takeover bids. Two issues that have been particularly controversial are the extent to which companies are allowed to take steps to discourage takeovers (‘takeover defences’) and workers’ rights in the takeover process. Academic analyses have typically contrasted an ‘Anglo-Saxon’ approach, which restricts both takeover defences and the rights of workers, with a ‘continental European’ approach, which allows such defences and grants workers more ‘voice’ in such situations. After a hung vote in the European Parliament in July 2001 on a proposed Takeover Directive, the European Commission later that year appointed a High Level Group of Company Law Experts (frequently referred to as the ‘Winter Group’ after its chair Jaap Winter) to analyse the issue and come up with a solution to the impasse. Subsequent to the publication of two reports by the group, the Commission proposed a new Takeover Directive in 2002, which was adopted – in modified form – two years later as Directive 2004/25/EC of 21.04.2004.

The 2004 European Directive on takeover bids (2004/25/EC) in principle served two main purposes: the Directive had to coordinate the (national) safeguards that member states require of listed companies traded on their markets and it had to protect the interests of shareholders in case of takeover bids or change of control.<sup>4</sup> The Directive gave guidance on how to proceed with takeover bids and established general principles that had to be complied with. Special attention was paid to minority shareholders.

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4. See Chapter 1 by Clarke in this volume for a more detailed analysis of the Directive.



The minimum requirements established by the Directive include, for instance, the designation of a national supervisory authority with competences to monitor takeover rules and procedures. According to the Directive, mandatory information to the shareholders of the offeree has to be listed in an offer document and the content of this document is prescribed in a long and detailed item list with minimum requirements (Article 6). The item list includes some basic information on social issues, including repercussions for and safeguarding of jobs, any material change in employment conditions and change of production locations. Other articles regulate such matters as the obligations of the board of the offeree company, restrictions on the transfer of securities and restrictions on voting rights once the process has started. The Directive includes optional arrangements for member states related to the lawful application of defensive measures and barriers. The worker involvement enshrined in the Directive is low profile. It is clear that the legislator at that time (and in this area) did not see the workforce as a crucial stakeholder. Besides, there is some inconsistency in the text of the Directive, notably where there is a link with 'insider information' (see below).

It is worth examining both the recitals and the articles of the text. A Directive has to be transposed into national law and normally the national legislator limits implementation to the articles of a Directive. The recitals have more limited value, but they do serve to explain the spirit of the envisaged legislation and can give some guidance (for instance, to judges) in cases of dispute and conflict. In Consideration 13 it is said that 'appropriate information' has to be provided to workers and their representatives concerning the terms of a bid, by means of the offer document. The meaning (and scope) of the term 'appropriate' is neither defined nor made operational in the articles of the Directive. Consideration 23 refers to disclosure of information (and consultation) according to relevant national provisions and the relevant EU legislation (like the EWC Directive and the 2002 general framework Directive on information and consultation). It is explicitly said in this Consideration that national provisions concerning disclosure before an offer is launched are permitted to the workforce of the offeror: 'Member States may always apply or introduce national provisions concerning the disclosure of information to and the consultation of representatives of the employees of the offeror before an offer is launched'.

In the recitals it is said that these provisions have to be in line with the rules of Directive 2003/6/EC on insider dealing and market manipulation. Given the fact that, in several Member States, it is considered to be unlawful

to give any information to the workforce before the launch of a bid, it is interesting to analyse the extent to which the European legislator has prescribed such a restricted policy. The 2003 Directive on insider dealing gives plenty of space for (different) national interpretations. It defines insider information as 'information of a precise nature which has not been made public' and forbids the acquisition or selling of shares by people who have access to inside information because of their employment. Disclosure of information by insiders is forbidden except in situations where disclosure 'is made in the normal course of the exercise of his employment, profession or duties'. If disclosure takes place every informed person is bound by confidentiality.

One could very well argue here that, in countries that have a national regulatory frame of industrial relations with strong worker involvement (whether through board-level representation or work councils enshrined in legal acts, or both), the interpretation of recital 23, in combination with the 2003 Directive on insider dealing, justifies the duty to inform worker representatives at the earliest possible stage. Several national and European legal acts formulate the obligation for the management of a company to inform the workforce in a timely manner on issues of major concern.

The right to act as workers representative can partly be found in other parts of the *acquis*. For instance, based on the European Works Council (EWC) Directive, an EWC has the right to ask for an extraordinary meeting with the management (both of the offeree and the offeror) based on 'exceptional circumstances'. The EWC Directive gives (in the subsidiary requirements) the EWC consultation rights in case of substantial changes and so on. Directive 2002/14/EC (the Information and Consultation Directive) provides arguments for enhanced rights at an early stage (Article 4.2. a, b and c) and speaks about 'such time, in such fashion and with such content as are appropriate to enable, in particular, employees' representatives to conduct an adequate study and, where necessary, prepare for consultation' (Article 4.3.). Directive 2002/14/EC also settles in fact the non-problem of confidentiality for insider information provided at an early stage in Article 6.1:

Member States shall provide that, within the conditions and limits laid down by national legislation, the employees' representatives, and any experts who assist them, are not authorised to reveal to employees or to third parties any information that, in the legitimate interest of the undertaking or establishment, has expressly been

provided to them in confidence. This obligation shall continue to apply, wherever the said representatives or experts are, even after expiry of their terms of office. However, a Member State may authorise the employees' representatives and anyone assisting them to pass on confidential information to employees and to third parties bound by an obligation of confidentiality.

Finally, it is appropriate to refer to the information and consultation section in Chapter III of the 2001 Transfer of Undertakings Directive (2001/23/EC). This Directive guarantees that rights apply during a legal transfer or a merger. Article 7 of this Directive specifies a list of items that both the transferor and the transferee have to inform their respective employees about. Transferor and transferee must give such information in good time, before a transfer is carried out. Where measures are envisaged in relation to the employees, workers' representatives have to be consulted in good time 'with a view to reaching an agreement' (Article 7.2). The information must be provided and consultations take place in good time before the change in the business (Article 7.3). Although the Transfer of Undertakings Directive does not apply to a takeover that is only based on the acquisition of shares (the transfer of securities), the outcome for the workforce might be the same. Thus, one would expect some consistency in the EU legislation.

Notwithstanding the other parts of the *acquis* and the openings in its recitals, the ambition is less obvious and manifest in the articles of the Directive on takeover bids. Article 6 of the Takeover Directive, which regulates the mandatory information concerning bids and introduces the offer document, prescribes that the boards of the offeree and the offeror shall communicate the offer document to the workers once the document is made public. Article 8 broadens this duty to workers' representatives in all countries where the offeree company is permitted to trade securities. And Article 9 gives the workers' representatives the right to receive the board's opinion of the bid. If received 'in good time' a separate opinion from the workers' representatives on the effects of the bid shall be appended to the board's opinion. Finally, a separate Article 14 says that the Directive shall be without prejudice to existing national and EU rights on information, consultation and, if provided, codetermination. However, the sentence formulated in Consideration 23 (namely that it is lawful to introduce or apply national provisions concerning the disclosure of information before an offer is launched) does not show up in the Directive's core articles.

## Assessing the impact of the Directive: the GOODCORP study

The impact of the Directive on takeovers in Europe has been a matter of debate. Some Member States already had ‘shareholder’-oriented takeover regulations in place prior to the passage of the Directive, notably the United Kingdom. For other Member States, however, the implementation of the Directive (in many cases a mere ‘copy–paste’ into national legislation) led to significant changes in or even the first-time establishment of a takeover regulatory regime.

Both the shareholder value and the stakeholder perspectives have taken issue with the Directive. For shareholder value advocates, the Directive did not go far enough to create a so-called ‘open market for corporate control’ through stronger restrictions on takeover defences (Edwards 2007; Davies *et al.* 2010). Specifically, the Directive does not require Member States to implement the so-called ‘board neutrality rule’, which would require the board of a target company to get permission from shareholders to take defensive measures once a takeover bid has been made (Article 9). The Directive also does not oblige Member States to apply the ‘breakthrough rule’ (Article 11), which requires the application of the ‘one share–one vote’ principle to shareholder voting on defences once a bid has been made. Finally, the Directive authorises Member States to implement a ‘reciprocity rule’, which allows companies to ignore any ‘board neutrality’ and ‘breakthrough’ rules in place if the bidder comes from a jurisdiction that does not impose these requirements on its own companies. Thus, according to this viewpoint, the Directive made too many concessions to the ‘continental’ model to create what they regard as a truly ‘open’ market for takeovers and thus should be revised to strengthen shareholder power.

From the stakeholder perspective, however, the passage of the Directive represents a clear victory for the shareholder paradigm in European company and securities law (Horn 2012; Johnston 2009; Sjøfjell 2009). In particular, the decision on whether or not a bid gets accepted is clearly placed in the hands of the shareholders of the target company, to the exclusion of workers or the management of the target company. As will be detailed later on in this introduction and in the rest of this book, although some provision is made for ‘worker voice’ the rights granted to workers are fairly weak and in no way challenge the rights of shareholders to make the decision. In some instances, existing rights and practices in

labour law and industrial relations, which also come into play in takeover situations, have been ‘trumped’ by securities and company law, for example, the requirement of confidentiality. Significantly, shareholder value advocates have not complained about worker rights being too strong in the Directive.

Although the external study on the implementation of the Directive picked up many of the criticisms and complaints of trade unions in its final report (Marcuss Partners and CEPR 2012), the European Commission declined to take up the task of significantly revising the Directive. In its Report to the European Parliament, Council and other EU bodies, the Commission argued that the financial crisis starting in 2007/2008 had led to a significant reduction in the number of takeovers, thus making it difficult to evaluate the impact of the Directive in practice (European Commission 2012). Although action was needed on a number of points, such as ‘concertation’, the way forward would best be found through further discussions. The Commission acknowledged the workers’ representatives’ complaints about the Directive and pledged to initiate a dialogue with trade unions. According to the ETUC this promise has not yet been honoured – at the time of publication of the present volume – more than three years after the publication of the Communication (see Séverine Picard in this volume). It should also be noted that, even though takeover activity certainly decreased after reaching a peak in 2008 in Europe, in no way did takeovers disappear, as a minimum of 500 have taken place every year since then (see Figure 1).

Given the importance of takeovers for workers, the ETUI’s GOODCORP network of academic and trade union experts on corporate governance and company law in 2013 decided to conduct its own detailed study of the issue of worker rights during takeovers. The study had three aims:

- to map workers’ rights in Europe to information, consultation and codetermination during takeover bids; this varies from country to country, not only because the EU Takeover Bids Directive was implemented differently in different countries (in some cases going above and beyond what was required by the Directive), but also because regulations on takeover bids may have pre-existed implementation and industrial relations regulations and practices may also play a role;
- to gather evidence regarding the extent to which these rights are in fact respected and utilised in practice; and

- to identify which rights are particularly effective for the protection of workers' interests during takeovers, as this experience might inform demands for revision of the Directive.

In order to carry out this investigation members of the GOODCORP network were commissioned to conduct a series of case studies of national regulations on takeover bids and of specific cases of takeovers. Furthermore, a set of studies on cross-cutting issues including the underlying rationale of the Directive and the economic and employment impact of takeovers were commissioned. The ongoing work and results of these efforts were discussed at the regular twice-yearly GOODCORP meetings over the past couple of years. The reports are now published as the chapters in this book and the main results summarised in the conclusion. The remainder of this introduction briefly introduces these chapters.

The first section of the present volume contains chapters on 'transversal' issues that cut across national boundaries. Chapter 1 by Blanaid Clarke provides a legal analysis of the Directive and the role that employees play in it. An examination of the background and underlying rationale of the Directive indicates that legislators recognised that workers' interests can be affected by takeovers and made an effort to provide some protection, namely rights to specific types of information about the projected impact of the takeover. However, the author concludes that these rights are completely inadequate to protect workers' interests; they are limited to information and do not extend to decision-making on the outcome of the takeover bid, which are granted to shareholders.

Hans Schenk, in the next chapter, critically analyses the economic rationale underlying the Directive, which makes the assumption that takeovers on the whole have a very positive economic impact. A review of the relevant statistical studies shows that this assumption does not hold in reality, as takeovers generally only create short-term wealth for the shareholders of the target company. Most takeovers take place during the 'euphoric' stage of merger waves and are motivated more by the 'perverse' motivations of managers than by long-term economic logic, such as pre-empting being taken over by another firm. The results of these studies call into question the rationale of the Directive that takeovers should be encouraged.

Chapter 3, by Andrew Pendleton, continues in this vein by examining the evidence on the employment effects of takeovers, which also are supposed

to be positive, according to the underlying rationale of the Directive. Econometric studies, however, show a fairly mixed picture, as results seem to vary based on the methodology used as well as the specific time period and sample of firms examined. On the whole there is disagreement on the net employment impact of takeovers; it is clear from these studies, however, that many, if not most takeovers involve job losses, at least in the short run. This suggests that workers should receive stronger rights in order to influence the outcomes of takeovers or discourage potentially 'bad' takeovers to better protect their interests during the takeover process.

The final chapter in Section 1, by Séverine Picard, outlines the European Trade Union Confederation's (ETUC) critical analysis of the Takeover Bids Directive and the scant attention paid to workers' rights in company law. In the review process of the functioning of the Takeover Directive the ETUC expressed its criticisms, as many takeovers are detrimental to workers' interests and workers' rights in the Directive are weak. The ETUC thus demands the strengthening of workers' rights in takeover situations through a revision of the Directive.

Section 2 of the book contains twelve chapters on national legal frameworks regulating takeover bids in each country, in alphabetical order based on country name. Industrial relations and labour law frameworks are also summarised insofar as they are relevant for takeovers. Nine of these chapters also include one or more case studies of takeovers. In Chapter 5 Helmut Gahleitner argues that the worker protections provided in the Austrian legal framework on takeover bids are inadequate because they come too late in the process. Because most public companies in Austria have a majority owner, controlling owners frequently strike a deal 'behind the scenes' to transfer ownership, before the public announcement of the bid is made. In this situation the works council's right to issue an opinion on the takeover is, for all practical purposes, rendered irrelevant. The case study he examines – the 2007 takeover of Böhler-Uddeholm – is atypical, as one of the few hostile takeover situations in Austria. In this type of situation, workers' representatives were able to form a coalition with others to oppose a bid by a private equity 'investor' and support a 'white knight' bid by Voestalpine, another Austrian company.

In the following chapter Guy van Gyes analyses the Belgian legal framework, which goes above and beyond what is required by the EU Takeover

Bids Directive by giving the Belgian works council in the target company the right to meet with the bidder management. This reinforces the strong position works councils enjoy in Belgium. However, this right does not apply in cases where the bidder is not from Belgium. This weakness is illustrated by the case study, the takeover of the Belgian telecommunications company Telenet by the US company Liberty Global.

In Chapter 7 Laura Horn analyses Denmark, where in most cases a strong system of social partnership in companies is protected from the pressures of hostile takeovers through ‘closed’ ownership structures at most listed Danish firms. An analysis of a ‘deviant’ rare case of an unsolicited offer – the 2012 takeover of the Danish company Thrane & Thrane (T&T) by the British aerospace and defence electronics group Cobham – shows what can happen when the largest owner does not hold a majority of shares. This type of situation could become more frequent as dispersed ownership structures become more common. Employee representatives on T&T’s board were also advised not to pass on the information they had about the bid to other employees due to fear of disclosure of ‘inside’ information.

The next chapter discusses another case where workers’ representatives on the board did not share their information with other workers’ representatives for more than a year after discussions started between managements; here Maria Jauhiainen analyses the takeover of the Finnish steel producer Rautaruukki by the Swedish steel company SSAB in 2014. This case also shows that the rules regarding confidentiality of information need to be clarified for and better understood by employee representatives on boards. Secondly, as European Commission competition authorities required the companies to divest parts of their operations before the takeover could go ahead, the case illustrates that European competition policy requirements on the bidding and/or target companies can significantly magnify the impact of a takeover on the workforce.

Udo Rehfeldt in Chapter 9 analyses the French Florange law, which was passed in 2014 as a response to the closure of two blast furnaces by the steel group ArcelorMittal, which was originally formed through a hostile takeover of European companies by the Indian steelmaker Mittal. The main goal of the law is to oblige a company that plans to close a plant to search for a new investor who would maintain operations. But it also attempts to discourage hostile takeovers by giving double voting rights to



long-term shareholders and by allowing the board of the target company to take defensive measures without approval from shareholders. Given that the French implementation of the EU Takeover Bids Directive also requires the bidder to meet with the works council of the target company France is thus a case where takeover legislation is particularly stakeholder-friendly.

In Chapter 10 Christos Ioannou looks at Greek takeover legislation and summarises a case study of a takeover of a Greek bank in the wake of the financial crisis. Prior to implementation, the EU Takeover Bids Directive represented a (small) step forward for workers in the sense that they previously had no formal rights to be informed about takeover bids and/or to issue an opinion to target shareholders. A case study of the takeover of the Greek Geniki Bank in 2012 shows that even these minimal rights were bypassed because the normal takeover procedure was not followed by the Greek government. However, the trade union involved was able to successfully use EU labour law to get its most important demands fulfilled in the takeover process.

The next two chapters illustrate cases where workers were able to build coalitions with other forces and mobilise against takeover bids perceived as unfavourable to them. In Chapter 11 Kevin O'Kelly analyses another country, Ireland, where the implementation of the Takeover Bids Directive in theory created new, if weak, rights for workers in takeover situations. The right to express an opinion on the takeover offer, however, has rarely been used in Ireland. An analysis of three bids by the Irish discount airline Ryanair for the former Irish flagship carrier Aer Lingus shows that workers were successfully able to ward off these hostile bids by forming a coalition with other parties concerned about the impact of such a takeover on workers and consumers.

In the following chapter Robbert van het Kaar and Jan Cremers examine the takeover framework in the Netherlands. The implementation of the Takeover Bids Directive in that country was also 'cut and paste' when it came to worker rights. However, works councils in the Netherlands enjoy strong statutory rights, including the right to be consulted by management at an early stage in restructuring situations, such as takeovers. This right to early consultation appears to conflict with the takeover legislation's requirement for confidentiality and the timing of information disclosure. By joining forces with other interests, workers were able to successfully mobilise against an attempt by hedge funds to

take over and split up the Dutch conglomerate Stork and support a takeover by a 'friendlier' party.

Chapters 13 and 15 provide analyses of the framework of laws and rules applying to takeovers in two Nordic countries, Norway and Sweden. As in other countries, there is a strong divide between securities and financial market law, on one hand, and company and labour law, on the other. In the Nordic model, rules agreed by the social partners are especially important for workers' rights in takeover situations. The chapter on Norway, authored by Bernard Johann Mulder, highlights the importance of Basic Agreements concluded between trade unions and employers. The chapter on Sweden, written by Erik Sjödin, shows that there is a general obligation in the Codetermination Act for management to consult with workers before there are significant changes in operations. This includes an obligation for a bidding company to consult with its own workers before the bid is launched. This right, however, does not extend to consultations between the target company's workers' representatives and the bidder.

In Chapter 14 Janja Hojnik describes the legal framework for takeovers in Slovenia, where rights defined under the Workers' Participation Act are much stronger than the information rights granted under national Takeover Law. A survey of seven chairs of works councils in Slovenian companies that have recently been taken over shows that companies for the most part have been complying with requirements under company law to provide information to workers. However, most of the survey participants expressed the feeling that they lacked the necessary means to significantly influence the outcome of the takeover. As a result, they had not used the right to express an opinion on the takeover bid to shareholders.

Georgina Tsagas in Chapter 16 analyses UK takeover legislation and its revision after the controversial takeover of the British confectionary and beverage company Cadbury. The UK takeover framework is frequently cited as the archetypical model of a 'shareholder oriented' system which has influenced the EU Takeover Bids Directive and been adopted (at least in part) by many other European countries. The 2010 takeover of Cadbury by the US based company Kraft, in which promises made in the offer document to keep a key production site open after the takeover were not kept, showed the weaknesses of the UK takeover framework, for example, the lack of penalties for not keeping employment commitments made in

the offer document. British takeover regulation has been revised in a more stakeholder-oriented direction, in part due to outcry over the Cadbury case, but practice will have to show whether these changes have resulted in a significant strengthening of workers' rights in takeover situations.

Overall, the country and company case studies are fairly heterogeneous; nevertheless a number of common themes emerge. First, the case studies illustrate the importance of workers' representatives' concerns about employment and working conditions in many takeover situations. Although the national implementation of the EU Takeover Bids Directive did represent a 'step forward' for workers in jurisdictions where no specific takeover-related rights existed for workers, nevertheless the most prevalent of these rights is the right to receive information about the takeover bid, including anticipated employment impacts. Substantive rights to influence the outcome of the takeover, if they exist at all, are embedded in pre-existing industrial relations and labour law regimes, particularly in the right to consult with management before key decisions are made. The analysis of national legal frameworks and the case studies indicate that revision of takeover legislation in the direction of a much more stakeholder-oriented approach is necessary if workers' interests are to be better protected in takeover situations. These common themes and key conclusions are discussed in greater detail in the concluding chapter of the book.

We would like to thank the GOODCORP network of corporate governance and company law experts for contributing chapters to this book and improving their content through discussions at network meetings. We are grateful to the ETUI and the EWPPC (European Workers' Participation Competence Centre) for funding this project and providing the administrative support needed to organise the network meetings.

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